IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 27TH NOVEMBER 2006 / 6TH AGRAHAYANA 1928

ST.Rev..No. 270 of 2005()

TA.698/2003 OF S.T.A.T.ADDL.BENCH,ERNAKULAM
.....

PETITIONER

PREMIER TYRES LIMITED,
KALAMASSERY.

BY ADV. SRI.M.PATHROSE MATTHAI (SR.)
SRI.JOHN RAMESH K.I.JOHN

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
SECRETARY, (TAXES), COMMISSIONER OF COMMERCIAL
TAXES, THIRUVANANTHAPURAM.

GOVT. PLEADER SRI. GEORGEKUTTY MATHEW.

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 27/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.R. RAMAN & K.P. BALACHANDRAN, JJ.

S.T. REV. 270/2005

DATED THIS, THE 27TH DAY OF NOVEMBER, 2006.

O R D E R

Raman, J.

The assessee - M/s. Premier Tyres Limited, Kalamassery, became a sick industry and taken over by M/s/ Appolo Tyres Limited with all its assets and liabilities. The assessment pertains to an earlier period 1996-97 where the assessee declared a taxable turnover of Rs. 67,66,169/97 and Rs. 66,61,463.24 respectively. The assessee obtained an advance licence for import of raw materials on condition of fulfilling its export obligation of the finished products. But by reason of its being taken over by M/s. Appolo Tyres, it could not fulfill its export obligation and thereby attracted the liability to pay customs duty of Rs. 43.09 lakhs on the imported raw materials. While completing the assessment, the assessing authority added this liability to the value of stock of imported goods (synthetic rubber and carton blank) held by the assessee. He also made an addition of Rs.1,01,533/- representing stock of carbon black and another sum of

Rs.5,85,412/- representing stock of Nylon Fabric, which, according to the assessee were unfit for use. The assessment was completed making the disputed addition of Rs. 49,95,945/-. This was subjected to challenge in appeal and second appeal before the tribunal. As per the final order of the tribunal dated 25.2.2003 in T.A. 47/2002, the tribunal allowed the appeal reversing the finding of the authorities and ordering deletion of the disputed addition of Rs. 49,95,495/- and directed the assessing authority to revise the relevant assessment accordingly. This order is produced as Annexure C to the revisional memorandum. We are told by the learned Senior Counsel Sri. Pathros Mathai, appearing on behalf of the assessee that consequential orders pursuant to Annexure C order has not been passed by the assessing officer as on today. However, before the tribunal could pass final orders in T.A. 47/02 the assessing officer proposed to reopen the assessment under Section 19 of the Kerala General Sales Tax Act, on the ground that the rate of tax applied in the earlier order passed was wrong and that in the case of synthetic rubber the rate of tax applicable is 12.5% as against 8% assessed originally. Likewise, for the carbon black the rate of tax applicable is 10% as against 8% originally assessed. Accordingly, he passed a revised order of assessment as per order dated 26.3.2002, Annexure B produced in this case.

2. Evidently, Annexure B order was passed much earlier to the final order passed by the tribunal on 25.2.2003 in T.A. 47/2002 as referred to earlier. As against the revised order of assessment Annexure B, the assessee preferred a First Appeal and a Second Appeal before the Tribunal. The tribunal confirmed the order of the assessing officer by its order dated 29.6.2004 Annexure F produced in the case. This is under challenge in this revision.

3. The limited contention raised by the counsel appearing for the revision petitioner is that while confirming the revised order of assessment by the Tribunal, the Tribunal did not give effect to its earlier order Annexure C while moulding the relief. In other words, according to him, the Tribunal should have directed the assessing officer to delete from the turnover the additions which he made earlier and which was set aside by Annexure C order.

4. The learned Government Pleader appearing on behalf of the State, on the other hand, would contend that the impugned order passed by the tribunal in the present case is only concerned with the revised order of assessment passed after reopening under Section 19 of the Act and what was concerned and questioned is the rate of tax applicable and independent of the issue in Annexure C order of the tribunal. He further submitted that the assessing officer is bound to give effect to Annexure C order and there was

no room for complaint that Annexure C has not been given effect to since the assessing officer is yet to pass orders consequent to Annexure C.

5. We heard the parties. It has to be observed that the finding of the tribunal confirming the order of the assessing officer in reopening the assessment under Section 19 does not call for any interference by this Court in this revision as the order has been passed after adverting to all the aspects of the matter and the rate of tax is applicable which is confirmed by the appellate authority and the tribunal. But while completing the assessment, the assessing officer had no occasion to give effect to Annexure C order since the revised assessment order was passed earlier to Annexure C order.

6. In such circumstances, it is for the assessing officer to pass orders deleting from the turnover the additions which he made in his earlier order of assessment which was cancelled by the tribunal by Annexure C order in T.A. 47/2002 and apply the rate of tax applicable as is found due by the present order passed by him.

Subject to the above clarification, the revision petition is disposed of.

P.R. RAMAN,
(JUDGE)

K.P. BALACHANDRAN,
(JUDGE)

knc/-